United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

933

BRIEF FOR APPELLANTS AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 21,076

CHARLES E. WILLIAMS, on behalf of himself and all other persons similarly situated and on behalf of the Mt. Jezreel Baptist Church,

Appellants

v.

Rev. HAROLD E. TRAMMELL, Pastor of the Mt. Jezreel Baptist Church, and the MT. JEZREEL BAPTIST CHURCH, a District of Columbia Corporation,

Appellees

APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

CHARLES E. WILLIAMS
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Appellant, Pro se
Counsel for Appellants

STATEMENT OF THE QUESTIONS PRESENTED

1. In a class action to test the legality of an election of trustees and other proceedings taken under the statute incorporating religious societies in the District of Columbia, may the provisions of Rule 23 of the Federal Rules be waived by the court or by the action of the parties?

2. Did the District Court err in requiring the parties to either settle the case or have it referred to a special master without deciding (a) whether the law required the corporate estate of the church to be represented by counsel separate and distinct from counsel representing the officer charged with misconduct; (b) whether the trustee election and management statute is mandatory or discretionary, and (c) if mandatory, whether the statute had been substantially complied with?

3. Did the District Court abuse discretion in refusing jurisdiction to inquire into the integrity of the stipulated dismissal judgment entered in the cause upon an application for Rule 60(b) relief from its operation?

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BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from an order denying the motion of the appellant, Charles E. Williams, for reinstatement of the action, under Rule 60(b), F. R. CIV. P., or for other relief from the prospective operation of a stipulated judgment of dismissal deemed no longer equitable, fair, or just.

The action was instituted December 21, 1966, invoking jurisdiction under U.S.C., Title 28, §§ 1401, 2201, 2202, Rule 23, F. R. CIV. P., and D. C. CODE ANN. § 11-521(a). The suit was dismissed per stipulation of the parties with certain enumerated conditions on February 27, 1967. A motion to reinstate the action, charging deliberate violation of the conditions of dismissal, was filed March 15, 1967. The order denying the motion was entered May 4, 1967. (JA 17). Notice of Appeal was filed May 15, 1967. (JA 18). This Court has jurisdiction on appeal under U.S.C., Title 28, §§ 1291, 1294(1).

STATEMENT OF CASE

This action was instituted as an individual and as a derivative suit to test the validity of an election of trustees and other proceedings involving the management of the corporate estate of the Mt. Jezreel Baptist Church. The corporate estate was created by Rev. Stat. D. C. §§ 533-544 (1875) as amended by Act of March 3, 1883, ch. 124, 22 Stat. 529-530, and codified by Act of March 3, 1901, ch. 854, 31 Stat. 1282, §§ 587-597, D. C. CODE ANN. §§ 29-501, et seq. (1961 ed.).

Jurisdiction was invoked to obtain a declaratory judgment, a visitation to correct abuses and nullify irregular proceedings, and an injunction against further breach of fiduciary obligations.

The verified complaint (JA 2) shows, and it is admitted in both answers (JA 9, 11) on file: (1) that the corporate membership meeting on December 9, 1966, was regularly called and held for the purpose of electing trustees (and other officers) "in accordance with the rules of discipline governing the church or denomination" as provided in the statute; (2) that the corporation has no written constitution or by-laws, as such, defining the responsibilities of officers in the management of the corporation; and (3) that the "rules or discipline governing the church" are included in the work, Edward T. Hiscox, The New Directory for Baptist Churches (1951 ed.).

The complaint and affidavits in support of the motion for a preliminary injunction [Filed December 30, 1966] set forth the specifications of a deliberate substantial violation of the rules by the defendant-appellee officer in conducting the annual election of trustees, alleging irreparable injury to the corporation and the minority members.

Two answers to the complaint were filed, one by the firm of FRIEDLANDER & FRIEDLANDER, as attorneys for the officer charged with misconduct and for the corporation, and the other by Miss Patricia A. Trivers for the corporation. Miss Trivers had been employed by the unanimous vote of the Board of Trustees on January 1, 1967, for that specific purpose. She thus

moved the court at once [Motion filed January 16, 1967] to disqualify FRIEDLANDER & FRIEDLANDER from representing the institutional interests in the action on the grounds of want of authority and conflict of interest.

The motion of Miss Trivers to strike the FRIEDLANDER answer, insofar as it purported to be a pleading of the corporation, came on for hearing February 20, 1967. But the court failed and refused to hear and decide the question. Rather, the court offered the parties the alternatives of settling the case (continuing the matter twice for that purpose) or of having the matter referred to a special master.

The appellants did not believe there was any "exceptional condition," within the contemplation of Rule 53(b), that would justify reference to a master. Therefore, to avoid the expense of such a procedure, or of testing its validity, appellants attempted to effect a meaningful settlement of the main issue. When this failed they agreed to accept the alleged illegally elected trustees in exchange for the promise of regular membership meetings conducted in accordance with Hiscox's and Robert's rules of order. (JA 16). The stipulation won court approval without regard to the conditions of Rule 23 of the Federal Rules.

The above-described summary disposition raises the questions of whether the provisions of Rule 23 may be waived either

by the court or by action of the parties; and whether the District Court is authorized to refuse jurisdiction (1) to construe the applicable statutory provisions and church rules relating to the election of trustees; (2) to determine whether there had been a substantial compliance with these laws in the election of trustees; and (3) to decide whether FRIEDLANDER & FRIEDLANDER were competent to represent any part of the institutional interests for purposes of either adjudication or settlement.

The ostensible construction of the terms of the stipulated judgment by the defendant-appellee officer, to mitigate the binding effect, led, inevitably, to further proceedings below and to this appeal.

On March 12, 1967, the defendant-appellee officer called and held a membership meeting following the Sunday morning worship services, without prior notice to the members, and proceeded to have the plaintiff-appellant summarily expelled from membership. The affidavit of plaintiff-appellant, [Filed March 15, 1967] in support of the application for relief from the prospective operation of the stipulated judgment, shows that the expulsion proceeding was conducted without regard to the conditions of the stipulated judgment so that the judgment, in effect, was turned into a mere paper formality and an instrument of wrong.

The counteraffidavit of the defendant-appellee officer, Rev. Harold E. Trammell, [Filed April 11, 1967] opposing the application for Rule 60(b) relief, merely concluded that the expulsion proceeding had been conducted in accordance with the discipline (Hiscox) without any attempt to meet the substance of the plaintiff's sworn statement. The counteraffidavits of Rev. Trammell's attorney, Blaine P. Friedlander, [Filed April 11, 1967] and of Henry Jackson [Filed April 18, 1967] attempt to show that the plaintiff——who drew the terms of the stipulation with the avowed purpose of including minimum acceptable provisions to protect minority members against arbitrary expulsion proceedings——agreed in advance to except himself from the crucial protective provisions of the stipulated judgment.

Nevertheless, the District Court denied the application [Motion to Reinstate Action, filed March 15, 1967] for Rule 60(b) relief on the ground of legal insufficiency. The court, apparently, determined that the alleged excommunication was a fact and accepted it as conclusive, indicating that to inquire into the excommunication procedures would necessitate holding a church meeting in the court room. Therefore, jurisdiction, under the broad equity powers conferred by Rule 60(b), to determine whether the proceedings had been, indeed, conducted in substantial compliance with the terms of the stipulated judgment, was refused.

Undoubtedly, the application for Rule 60(b) relief was addressed to the sound discretion of the District Court. It is not contended, however, that the denial of the application constituted an abuse of discretion. The precise question presented is whether the refusal of jurisdiction to determine, after a full hearing of testimony and other evidence upon the application of Rule 60(b) relief charging fraud on the court and applicant, if the administration of justice had been subverted by a willful violation of a court order.

The jurisdiction of this Court is invoked to review the proceedings below and to resolve, or remand for determination, the questions thus raised.

STATUTES AND RULES INVOLVED

The statutes involved are §§ 501, 502, 503, 504, and 507 of Title 29 of the Code of the District of Columbia (1961 ed.) printed infra, JA 19-20; Edward T. Hiscox, The New Directory for Baptist Churches (1951 ed.), note 22, page 191, infra, JA 20; Rules 23, 53(b), and 60(b) of the Federal Rules of Civil Procedure, infra, JA 21, et seq.

STATEMENT OF POINTS

1. The District Court erred in refusing jurisdiction to determine: (a) whether this suit is a genuine class action within Rule 23 of the Federal Rules; (b) whether the corpora-

tion was entitled to be represented by counsel independent, separate, and distinct from counsel representing the officer charged with misconduct and, if so, whether it consented to have any part of the institutional interests represented by the officer's counsel; and (c) whether there was a substantial compliance with the statute in the election of trustees and in other proceedings on December 9, 1966, relating to the management of the corporate estate.

2. The District Court erred (a) in denying to plaintiff-appellant the opportunity to establish, by witnesses and other evidence, his claim for Rule 60(b) relief, and (b) in refusing jurisdiction to determine, upon the charge of fraud on the court and applicant, after a full hearing, whether the administration of justice had been subverted by a deliberate violation of the conditions of a stipulated dismissal which operates as a judgment on the merits.[1]

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1. Hart Shaffner & Marx v. Alexander's Dept. Stores, Inc., 341 F.2d 101, 102 (2d Cir. 1965); A. D. Julliard & Co. v. Johnson, 259 F.2d 837, 844 (2d Cir. 1958), cert. denied, 359 U.S. 942, 79 S.Ct. 723, 3 L.Ed. 2d 676 (1959); Oglesby v. Attrill, 105 U.S. 605, 26 L.Ed. 1186 (1882).

SUMMARY OF ARGUMENT

1. In a derivative suit to set aside an election and other proceedings taken pursuant to law on the ground of illegality, it was the duty of the District Court, first, to determine whether the suit was a genuine class action under Rule 23 of the Federal Rules, and, secondly, to determine whether institutional interests were represented by counsel who was authorized to do so and who was not then representing a potential conflicting interest.

2. The suit raised important issues of statutory construction concerning minimum statutory requirements in the election of church trustees and in rule-making for management of the corporate estate. Therefore, it was the duty of the District Court to determine whether the institution's interests had been properly represented in settlement negotiations before approval of a stipulation of dismissal which, in effect, ratified the questioned statutory proceedings.

3. Entry of the stipulated dismissal judgment constituted enforcement of the trustee election and management statute. Thus, it was the duty of the District Court, upon application for Rule 60(b) relief from its operation, to inquire into the integrity of the judgment, permit the applicant to establish the claim for relief by witnesses and other evidence, and determine whether the proceedings complained of had been taken pursuant to the conditions of the stipulated dismissal.

ARGUMENT

I.

The Corporation Had the Right to Have the Institutional Interests in the Action Fairly Represented, for Purposes of Either Adjudication or Settlement, by Counsel of Its Own Choosing Separate and Distinct from Counsel Representing the Officer Charged with Misconduct

"The rule of undivided loyalty" in the attorney-client relationship "is unbending and inveterate." It is applied by the courts to prevent potential conflict of interest with "uncompromising rigidity" because "the punctilio of an honor" rather than good faith "is the standard of behavior."[2] The exhortation of the canons of professional ethics is to "abstain from all appearance of (rather than actual) evil."[3]

Want of authority as well as potential if not actual conflict of interest disqualify FRIEDLANDER & FRIEDLANDER from representing any part of the institutional interests in this case.

First, the defendant-appellee officer (hereinafter called the pastor) is not a corporate officer with any legal authority

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2. Cord v. Smith, 338 F.2d 516, 524-525 (9th Cir. 1964).

3. United States v. Trafficante, 328 F.2d 117, 120 (5th Cir. 1964). (Emphasis supplied.)

to manage the corporate estate. The law delegates such authority to the trustees in the absence of corporate rules and regulations to the contrary. (D. C. CODE § 29-504, printed infra, JA 19-20.)

The pastor is the leader of the church which is a separate entity from the corporate estate——an entity deriving its authority from law. And he is a member of the corporation with the same rights and obligations of other members. The only office held by the pastor in the corporation is that of presiding officer at membership meetings. The office is held by him not by authority of civil or church law (Hiscox, JA 20) but by custom. In this jurisdiction "a long unbroken usage ha[s] the effect of a by-law until regularly revoked."[4]

It is submitted that the answer (JA 9) authorized to be filed by the pastor and chairman of the deacons is not a bona fide pleading of the appellee-corporation. The pastor and deacons, constituting the ministry of the church entity, have no authority, in the absence of a lawful delegation by the trustees, to sue or be sued on behalf or in the name of the corporate entity. (D. C. CODE § 29-507, JA 20.) Testimony

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4. Walker v. Johnson, 17 App. D.C. 144, 161 (1900).

in a case now pending in District Court[5] indicates that such a delegation was sought, unsuccessfully, by the ministry, and par. 9 of the trustees' answer (JA 14-15) clearly shows that the pleading of the trustees was filed pursuant to statutory authority.

Secondly, at the time this action was instituted, the firm of FRIEDLANDER & FRIEDLANDER was, and is still, counsel of record for the pastor in active defense of a claim filed on behalf of the church corporation.[6]

Counsel for the trustees in the instant action, Miss Patricia A. Trivers, a member of long standing of the Church, had been employed—pursuant to the action of the membership meeting in March of 1966—to represent the institutional

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5. Williams v. Jackson et al., Civil Action No. 717-67, seeking declaratory, legal, and other relief on the ground of an unlawful conspiracy to arbitrarily excommunicate plaintiff from fellowship in violation of the conditions of a judgment.

6. Trammell v. Williams et al., Civil Action No. 1578-66, is a damage suit instituted by the pastor June 15, 1966, against officers and members of the Mt. Jezreel Baptist Church. The defendants filed a counterclaim, as representatives of the church and corporate estate, for (1) specific performance or a judgment of $5,000.00 and costs; (2) an accounting by the pastor for funds withdrawn from the corporate estate without prior consent of the trustees and members; and (3) to expunge a document from the public records falsely certifying the election of the pastor and chairman of the deacons as trustees.

The promise to convey title to real estate as security for a loan to the pastor was made by his attorneys in April of 1966. And pursuant to a church resolution on June 6, 1966, counsel for the trustees prepared and forwarded a proposed deed and lease-purchase agreement to the pastor's attorneys in July of 1966. However, his attorneys have taken no action to consummate the transaction as agreed.

interests in advancing the pastor $5,000.00 from the corporate estate to purchase a residence. Since that time the membership has neither consented nor been afforded the opportunity to consent to the representation of the institution's interests in this action by FRIEDLANDER & FRIEDLANDER.[7]

In this Circuit, the rule of undivided loyalty precludes dual representation in a derivative suit.[8] Whenever "officials are charged with breach of fiduciary duty, the organization is entitled to an evaluation and representation of its institutional interests by independent counsel, unencumbered by potentially conflicting obligations of any defendant officer. * * * Potential, no less than actual, conflict disqualifies counsel from serving in a double capacity."[9]

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7. Miss Trivers was employed by the unanimous vote of the trustees on January 1, 1967, to defend this action by consenting to and supporting the prayers for declaratory and injunctive relief. (JA 11, 14-15). Although the affidavit of Aulin E. Johnson, chairman of the alleged illegally elected trustees (filed January 23, 1967), shows that such trustees were installed in office on January 8, 1967, the statutory qualifying certificate was not filed with the Superintendent of Corporations until January 16, 1967. There is no allegation or evidence anywhere in the record which shows that the trustees' action of January 1, 1967, to employ Miss Trivers as counsel for the corporate estate in this action was ever annulled or set aside.

8. Murphy v. Washington American League Baseball Club, 116 U.S. App. D.C. 362, 366, 324 F.2d 394, 398 (1963); Milone v. English, 113 U.S. App. D.C. 207, 210, 306 F.2d 814, 817 (1962).

9. International Brotherhood of Teamsters v. Hoffa, 242 F. Supp. 246, 256-257 (D. C. 1965); 7 AM. JUR. 2d, § 34, Attorneys at Law (1963).

It is submitted, in view of the foregoing circumstances, that FRIEDLANDER & FRIEDLANDER should have been disqualified from representing any part of the institutional interests in the case, as a matter of law, and that participation of the firm in a dual capacity during settlement negotiations so taints the stipulation of dismissal that it cannot operate as a valid subsisting judgment of the District Court.

II.

If the Stipulated Judgment Is Not Void Then the Refusal of the District Court to Inquire into Whether There Had Been a Substantial Circumvention of Its Conditions Constitutes Abuse of Discretion

The District Court correctly decided that the fact of excommunication would be conclusive. The church is free from judicial interference in "matters of church government as well as those of faith and doctrine." But this is true only "where no improper methods of choice are proven." Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116, 73 S.Ct. 143, 154, 97 L. Ed. 120 (1952).

Therefore, where, as here, "improper methods" to achieve passage of an excommunication resolution are charged, the District Court was obliged to "inquire whether the resolution of expulsion was the act of the church." It would be "the act

of the church" only if the majority of the members "adhere[d] to the organization and to the doctrines" of the church. Otherwise, the expulsion resolution "is a void act."

The courts are thus authorized to "examine into the proceedings of ecclesiastical bodies with indulgence" and to give a "consistent construction" to their proceedings "in conformity to existing rights" where possible.[11]

The right not to be arbitrarily expelled from church membership is the right sought to be secured in the conditions of the dismissal stipulation and the application for Rule 60(b) relief. Obviously, the condition to follow Hiscox's and Robert's rules of order at "every congregational business meeting" (JA 17) was intended to apply to all congregational meetings, including excommunication proceedings, since all church meetings transact business affecting both the ecclesiastical and temporal concerns of the members and the institution.

Consequently, the application for reinstatement sought to invoke the visitorial powers of the court for the purpose

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10. Bouldin v. Alexander, 15 Wall. (82 U.S.) 131, 140, 21 L.Ed. 69 (1873), involving a dispute within the Third Baptist Church in the District of Columbia.

11. Mason v. Muncaster, 9 Wheat. (22 U.S.) 445, 458-459, 6 L.Ed. 131 (1824), where the validity of the election of the vestry was drawn into controversy.

of examining into the expulsion proceeding, determining its legality, and enforcing the plain terms of the stipulated dismissal.[12] The specific rules adopted and incorporated in the stipulation of dismissal and evidence of their violation are set forth, infra, JA 24.

In addition, testimony on file in Civil Action No. 717-67 (note 5) shows that a congregational business meeting for March 17, 1967, was called pursuant to the condition for having such meetings in March, June, September, and December of 1967; that the meeting was commenced with a quorum present; and that the pastor adjourned the same sua sponte without transacting any business. (Counsel states of personal knowledge that no such meeting has been called or held in June of 1967.)

Under these circumstances, the District Court was obliged to determine whether there had been such a prejudicial repudiation of the terms of dismissal as to render the stipulation "a mere paper formality" and, if so, to impose "suitable protective terms or conditions" to prevent injustice.[13]

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12. At common law "the power of visitation [was] applicable only to ecclesiastical and eleemosynary corporations." However, "in the United States the legislature is the visitor of all corporations created by it." Guthrie v. Harkness, 199 U.S. 148, 157, 158, 26 S.Ct. 4, 7, 50 L.Ed. 130, 4 Ann. Cas. 433 (1905).

13. Laird v. Air Carrier Engine Service, 263 F.2d 948, 953 (5th Cir. 1959).

This Court does not permit stipulations to be violated in either the suit in which made or in a subsequent suit[14] because "valid stipulations are controlling and conclusive" and the courts are bound to enforce them in the absence of fraud, mistake, or some other compelling reason.[15] And where such stipulations cannot be enforced, the courts are "empowered" to "put the parties back in the position in which they were before the stipulation was made."[16]

Approval by the District Court and entry of the stipulated judgment of dismissal of the action constituted enforcement of a contract between the parties. Of more significance, however, is that entry of the stipulation constituted enforcement of the statute relating to the selection of trustees and management of the corporate estate of the church. It is submitted, in light of the circumstances which have "turned" the

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14. Chapman v. Potomac Chemical Co., 81 U.S. App. D.C. 406, 407, 159 F.2d 459, 460 (1947).

15. Burstein v. United States, 232 F.2d 19, 22 (8th Cir. 1956). Accord: Osborne v. United States, 351 F.2d 111, 120 (8th Cir. 1965) (Criminal case); Verkouteren v. District of Columbia, 120 U.S. App. D.C. 361, 346 F.2d 842 (1965)(Taxes); Los Angeles Shipbuilding & Drydock Co. v. United States, 289 F.2d 222, 233 (9th Cir. 1961)(Internal Revenue); Viking Theatre Corp. v. Paramount Film Distributing Corp., 245 F. Supp. 404 (E.D. Pa. 1965)(Antitrust).

16. Morse Boulger Destructor Co. v. Camden Fibre Mills, 239 F.2d 382, 383 (3rd Cir. 1956). Cf., Laughlin v. Berens, 73 App. D.C. 136, 118 F.2d 193 (1940).

stipulated dismissal "into an instrument of wrong,"[17] that its continued enforcement is inequitable, unjust, and contrary to law. This Court has held that changed circumstances caused by the action of one party to a judgment will justify relief to the other party if there is no prejudice.[18]

Moreover, the circumstances giving rise to the application for relief in this case warranted inquiry into the integrity of the judgment. "Tampering with the administration of justice * * * involves far more than injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated." Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250 (1944).

It is submitted that the absence of neglect, absence of control by appellants of the factors rendering the stipulated dismissal no longer equitable or just, and absence of prejudice to the rights of the appellees, qualify appellants for Rule 60(b) relief in this case.

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17. System Federation No. 91, Railway Employes' Dept. v. Wright, 364 U.S. 642, 647, 81 S.Ct. 368, 371, 5 L.Ed. 2d 349 (1961).

18. Jackson v. Jackson, 107 U.S. App. D.C. 255, 276 F.2d 501, cert. denied, 364 U.S. 849, 81 S.Ct. 94, 5 L.Ed. 2d 73 (1960).

III.

This Case Presents Important Questions of Statutory Construction Which Should Be Resolved

Should it be determined that appellants are entitled to relief, the following important questions of statutory construction, of general interest to congregational churches in this jurisdiction, are raised by this case and should be settled.

First, in the case of the ordinary business corporation, "the majority has a right to control, but where it does so it occupies a fiduciary relation toward the minority, as much as the corporation itself or its officers and directors."[19]

Query: Do the provisions of D. C. CODE §§ 29-501, et seq. impose the same or similar fiduciary obligations upon the parties to the relationship created by the statute? Is the pastor, who assumes de facto to conduct the affairs of the church's corporate estate and to deal with it, subject to

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19. Mayflower Hotel Stockholders Protective Committee v. Mayflower Hotel Corp., 84 U.S. App. D.C. 275, 282, 173 F.2d 416, 423 (1949), quoting from Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939).

the same or similar close scrutiny as officers of a business corporation?[20]

And, secondly, "the statute law of the District of Columbia and the certificate of incorporation constituted the 'constitution' of the company; and these could not be altered or amended even by the unanimous vote of all the stockholders of the company."[21] "No corporation has authority to violate an inhibition or go beyond the limits of its charter." Yonkers v. Downey, 309 U.S. 590, 597, 60 S.Ct. 796, 800, 84 L.Ed. 964 (1940).

Query: Do the statutory provisions creating the corporate estate of the Mt. Jezreel Baptist Church constitute its charter? If so, do the proceedings described in par. 12 of the complaint (JA 6-7) and par. 6 of the trustees' answer (JA 13) substantially comply with the charter or statutory requirements for the election of trustees?

Query: In the absence of specific available rules and regulations, does D. C. CODE § 29-504 confer full power of corporate management of the estate on the trustees? Does the

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20. In the ordinary business corporation, dealings between the officers and the corporation are subject to rigorous scrutiny casting upon such officers the burden of proving not only the good faith of the transaction but also of showing its inherent fairness from the viewpoint of the corporation. Chenery Corp. v. SEC, 75 U.S. App. D.C. 374, 380, 128 F.2d 303, 309 (1942), remanded, 318 U.S. 80, 63 S.Ct. 454, 87 L.Ed. 626 (1943); McKay v. L. C. Wahlenmaier, 96 U.S. App. D.C. 313, 322, 226 F.2d 35, 44 (1955).

21. Scanlon v. Snow, 2 App. D.C. 137, 155 (1894).

established practice of the pastor and deacons to call all business meetings preclude the trustees from calling meetings of the members to transact business relating to management of the corporate estate and other temporalities?

Query: In the absence of custom or precedent, does D. C. CODE § 29-507 authorize the pastor or deacons who have not been elected trustees to sue and be sued in the name of the church? Do the deacons have the authority to commit the corporate estate to binding contractual obligations without the consent of the trustees?

"Every problem of statutory construction [is] unique." United States v. Universal CIT Credit Corp., 344 U.S. 218, 221, 73 S.Ct. 227, 229, 97 L.Ed. 260 (1952). But the absence of any authoritative answer to the questions raised here since the enactment of the statute makes this case unique.

It is submitted that the Code provisions involved repose as strict obligations of trust and confidence in the officers and majority members of the Mt. Jezreel Baptist Church as the law requires in other fiduciary relationships. It is, moreover, submitted that the election of trustees and management of the corporate estate constitute the exercise of express powers which must be strictly construed in the public interest.

CONCLUSION

The order appealed from should be vacated and the case remanded with appropriate instructions.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES E. WILLIAMS, on behalf of himself and on behalf of all other persons similarly situated and on behalf of the Mt. Jezreel Baptist Church, Plaintiff,	)	
v.	)	CIVIL NO. 3346-66
Rev. HAROLD E. TRAMMELL, Pastor of the Mt. Jezreel Baptist Church, and the	)	
MT. JEZREEL BAPTIST CHURCH, a District of Columbia Corporation, 5th & E Streets, S. E. (Serve: Alton B. Johnson, Chairman of the Board of Trustees), Defendants.	)	

RELEVANT DOCKET ENTRIES

Date	Proceedings
1966	
Dec. 21	Complaint
Dec. 30	Motion for Preliminary Injunction
1967	
Jan. 3	Answer to Complaint (Friedlander)
	Opposition to Motion for Preliminary Injunction (Friedlander)
	Certificate of Readiness (Friedlander)
Jan. 5	Answer of the Defendant Mt. Jezreel Baptist Church (Trivers)

Date	Proceedings
1967	
Jan. 5	Consent to Motion for Preliminary Injunction (Trivers)
Jan. 16	Motion to Strike Answer (Trivers on behalf of the Mt. Jezreel Baptist Church)
Jan. 17	Order (consolidating hearing of preliminary injunction and trial on the merits)
Jan. 23	Opposition to Motion to Strike Answer (Friedlander)
Feb. 27	Stipulation (dismissing action) and Praecipe
Mar. 15	Motion to Reinstate Action (Plaintiff)
Apr. 4	Opposition to Plaintiff's Application to Reinstate Action (Friedlander)
May 4	Order (denying motion to reinstate action)
May 15	Notice of Appeal

* * *

[Filed Dec. 21, 1966]

COMPLAINT OF A MEMBER OF A RELIGIOUS CORPORATION FOR A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. Jurisdiction is invoked under the Judicial Code, 28 U.S.C. §§ 1401, 2201, 2202, Rule 23, Federal Rules of Civil Procedure, and the D. C. CODE ANN. § 11-521(a). The parties hereto reside in the District of Columbia. The amount involved, exclusive of interest and costs, exceeds $10,000.00.

2. The Mt. Jezreel Baptist Church is an independent, self-governing, nonprofit, religious, membership corporation organized in 1883 and existing under the Act of March 3, 1901, ch. 854, 31 Stat. 1282, §§ 587-597, D. C. CODE ANN. §§ 29-501 et seq. (1961 ed.).

3. Defendant Harold E. Trammell is a licensed Baptist minister of the Gospel who was installed as pastor of the defendant corporation January 9, 1966, and has ever since served continuously in that office.

4. During all the times complained of the plaintiff has been a member in good financial standing of the defendant corporation.

5. This action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction.

6. Plaintiff brings this suit on his behalf and on behalf of all other members of the corporation similarly situated and as a secondary or derivative action on behalf of the corporation.

7. During the times herein complained of, defendant Trammell used his office in a manner calculated to usurp the authority of the Congregation and Board of Trustees to the substantial prejudice of the rights of the plaintiff and a large number

of other members of the corporation similarly situated as hereinafter more particularly set forth.

8. The Rules of Order for business meetings of the corporation are included in Edward T. Hiscox, A New Directory for Baptist Churches (1951), which was adopted by the corporation in 1962. A copy of the Rules is incorporated herein by reference and annexed hereto as Exhibit A.

9. The plaintiff is informed and believes that the corporation has no written constitution or by-laws, as such, defining the responsibilities of officers in the management of the corporation. However, in 1962, the corporation did adopt Hiscox, supra, as a guide for managing its internal affairs. Plaintiff is informed that the work is now out of print.

10. At a duly called special business meeting of the corporation on June 6, 1966, it was determined that the corporation should be reorganized and a proposed constitution was reported to the meeting by a special committee appointed by defendant Trammell for that purpose. By-laws relating to administration, officer responsibility, and fiscal management were proposed. The members then resolved that all proposals should be consolidated in one document, reproduced, and a copy thereof furnished to each member of the corporation for study at least two weeks

before the next business meeting. However, the defendants failed and refused to take any measures in compliance with the said resolution and caused none of the proposals to be put on the agenda for consideration at the next business meeting held December 9, 1966.

11. At the business meeting of December 9, 1966, defendant Trammell, as presiding officer, in violation of the Rules of Order, failed and refused to have his proposed order of business approved by the members; or to entertain or put to a vote plaintiff's motion, properly made and seconded, to suspend the rules for the purpose of modifying the agenda in order to take up unfinished and other important business involving the security of the corporation's property rights; or to put to a vote plaintiff's appeal from defendant Trammell's ruling against the right to have the order of business amended.

12. At the said meeting of December 9, 1966, defendant Trammell presented his own annual report containing several distinct propositions, viz., proposals to reorganize management by establishing new committees and redelegating functions; budget proposals for the fiscal year ending December 31, 1967; and a proposed slate of nominees for Church offices and committees. Defendant Trammell as presiding officer engineered

the adoption of the report by "steamroller" methods, in utter disregard of the standing rules of order and procedure, to-wit:

(a) He entertained a motion to adopt the report in violation of the standing rule requiring all new business to be cleared by a joint conference of the Board of Deacons and Board of Trustees before the same is presented to the corporation's membership for final action.

(b)He refused to entertain or put to a vote the motion of the Chairman of the Board of Trustees, properly made and seconded, to take up the report ad seriatim in willful disregard of the rule that a motion containing more than one proposition "must be divided at the request of any member."

(c) He arbitrarily refused to entertain or put to a vote motions properly made and seconded to lay the report on the table and to adjourn.

(d) He by-passed debate of the report on the merits by entertaining the motion of his chief supporter for the previous question and by cutting off debate upon the vote of an ostensibly doubtful majority instead of the required two-thirds vote and failing to announce the count of ayes and nays.

(e) He allowed children to vote even though children are members of the corporation without any legal obligation to

contribute regularly to its capital and operating expenses and are unable to hold office or make corporate policy responsibly. The effect of this procedure was to extend to parents an unfair advantage.

13. The above-described proceedings deprived the plaintiff and all other members of the corporation similarly situated the right to nominate candidates for corporate offices or to scrutinize the personal and other qualifications of nominees, as well as the right to a voice in corporate policy and the appropriation of corporate funds and property; and such deprivation constituted a breach of the fiduciary relation existing between the majority and the minority of the corporation's members all of whom are equal owners of the corporate property.

14. The plaintiff and all other dues-paying members similarly situated have suffered irreparable injury to their membership rights by reason of the above-described proceedings for which there is no adequate remedy at law. The plaintiff verily believes that if the Court does not take jurisdiction further actions will be taken in breach of the said fiduciary relation; contracts existing between defendant Trammell and the corporation will be repudiated or modified to the substantial prejudice of the corporation; corporate property will be dissipated; the

membership will not be kept informed of corporate affairs; and dissenting members will be subject to abuse and summary expulsion without regard to the traditional notions of fair play, all of which would be to the substantial injury of the corporation.

15. An appeal for immediate corrective action was made to the corporation and its principal executive and ministerial officers by letter dated December 14, 1966, a copy of which is annexed hereto as Exhibit B. There is little reason to believe that voluntary internal corrective action will be taken.

WHEREFORE, plaintiff respectfully prays that the Honorable Court will:

1. Hear and determine this cause at an early date;

2. Enter a judgment declaring the rights of the parties, nullifying the proceedings of the corporation taken at the meeting of December 9, 1966, and requiring duly called meetings of the corporation held for the purpose of passing by-laws and electing officers under their authority;

3. Issue a preliminary injunction restraining the corporation and its officers from carrying into effect, or acting under color of the authority of, the actions taken at the said meeting of the corporation on December 9, 1966, for the purpose of

preserving the status quo pending determination of the rights of the parties and balancing possible injury; and

4. Order such other and further relief as to the Court may seem meet and proper in the premises.

/s/ Charles E. Williams
Plaintiff pro se

[Jurat]

* * *

[Filed Jan. 3, 1967]

ANSWER TO COMPLAINT

First Defense

The complaint fails to state a cause of action upon which any relief can be granted.

Second Defense

Answering the complaint, paragraph by paragraph, your Defendants say:

(a) Defendants admit the allegations of par. 2.

(b) Defendants are without sufficient information to either admit or deny pars. 1, 4, and 15, and demand strict proof thereof.

(c) Defendants deny that the allegation contained in par. 3, that defendant Harold E. Trammell is merely licensed, is not true, and state that the said Defendant is duly ordained. They

admit the balance of said paragraph.

(d) Defendants—with reference to pars. 8 and 9—while admitting the adoption of Hiscox by the church in 1962, state that the church is governed by the New Testament of The Holy Bible, secondly, by the vote of the congregation, and then—and only then—does Hiscox guide.

(e) Defendants deny the allegations of pars. 5, 6, 7, 10, 11, 12, 13 and 14, as written, and demand strict proof thereof.

Third Defense

The complaint fails to state the interest of the Plaintiff and what injuries, if any, the action of the majority caused the Plaintiff.

Fourth Defense

For a fourth and affirmative defense Defendants state that Charles E. Williams joined the co-defendant church on May 1, 1966, and has since that time attempted to undermine the workings of the church for his own purpose. He has taken the books of account and divers financial records and, with the consent of the church treasurer, during the year 1966 has refused to allow said books to be audited as directed by the Board of Deacons. Your Defendants verily believe that this action was undertaken in order that the contents of the books and records would

not be disclosed.

Fifth Defense

For a fifth defense Defendants state that the Plaintiff has failed to follow the procedures established by the New Testament of the Holy Bible, the vote of the defendant congregation and Hiscox' New Directory for Baptist Churches.

WHEREFORE, Defendants demand that the action be dismissed, with costs to the Plaintiff.

MT. JEZREEL BAPTIST CHURCH
By: /s/ Henry Jackson
(Chairman, Board of Deacons)
/s/ Harold E. Trammell
Defendants

FRIEDLANDER & FRIEDLANDER
Mark P. Friedlander
Mark P. Friedlander, Jr.
Blaine P. Friedlander
Harry P. Friedlander
1210 Shoreham Building
806 - 15th Street, N. W.
Washington, D. C. 20005
Attorneys for Defendants

[Jurat]

* * *

[Filed Jan. 5, 1967]

ANSWER OF THE DEFENDANT MOUNT JEZREEL BAPTIST CHURCH TO COMPLAINT FOR A DECLARATORY JUDGMENT AND INJUNCTION

Comes now the Defendant Mount Jezreel Baptist Church, defendant in the above named action, and in answer to the allega-

tions contained in said complaint, states as follows:

1. Defendant admits the allegations contained in pars. 1, 2, 3 and 4 of the complaint.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in pars. numbered 5, 6 and 7 of the complaint.

3. Defendant admits the allegations contained in pars. numbered 8 and 9 of the complaint.

4. Defendant admits the allegations contained in par. numbered 10 of the complaint with the exception of those contained in the last sentence of said paragraph. As to the latter, it is believed that the defendant Trammell and the Board of Deacons of the corporation were responsible for drawing up the agenda for the meeting of December 9, 1966, and that since the defendant corporation through its Board of Trustees was not given an opportunity to assist in drawing up the agenda or determining the business to be covered at said meeting, Defendant Trammell and said Board of Deacons should be held solely responsible for any failure of said defendant to comply with the resolution passed at the June 6th meeting and his failure to include any of the proposals referred to on the agenda of the meeting complained of.

5. The defendant admits that a business meeting of the corporate defendant was held on December 9, 1966, and further admits that the order of business was not approved by the members by formal vote. However, it states that it has not been the practice of the church to require such approval.

6. The defendant admits that the defendant Trammell presented an annual report at the December 9th meeting and admits that said report contained the distinct propositions enumerated. It further admits the following allegations contained in par. numbered 12 of the complaint: that defendant Trammell entertained a motion to adopt the report; that the defendant Trammell refused to entertain or put to a vote the motion of the chairman of the Board of Trustees to take up the report ad seriatim as is the usual practice at corporate meetings; that debate on the motion to adopt the report was cut off upon vote of less than a 2/3 majority; that defendant Trammell failed to announce the count of ayes and nays and that children were permitted to vote. The allegations contained in subdivision (c) of par. number 12 are also admitted. The remaining allegations are denied.

7. Defendant, in answer to the allegations contained in par. numbered 13 of the complaint admits that as a result of the proceedings at the December 9th meeting, some of the members

of the corporation did not have the opportunity to nominate candidates for office and further admits that said proceedings resulted in some of the corporate members being unable to voice their opinion as to the policies of the church and the appropriation of corporate funds and property. The defendant further believes that there was a breach of the fiduciary relation existing between the majority and minority of the corporate membership.

8. The defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in par. numbered 14 that the plaintiff and all those similarly situated have suffered irreparable injury as a result of the proceedings of December 9, 1966. However, the defendant does believe that if the Court does not take jurisdiction the corporation will suffer irreparable injury in that the membership will not be kept informed of corporate affairs; the corporate property will be dissipated, and dissenting members will be subject to abuse and summary expulsion without regard to traditional notions of fair play.

9. The defendant admits the allegations contained in par. numbered 15 of the complaint, and by way of further answer the defendant states that on Sunday, June (sic) 8, 1967, the defen-

dant Harold E. Trammell plans to install the officers elected pursuant [to] the action taken at the corporation's business meeting on December 9, 1966. It being the unanimous opinion of the members of the defendant's trustee board that if this is done, the corporation will suffer irreparable injury, said Board of Trustees consisting of Alton B. Johnson, LeRoy H. Brown, James W. Howard, Balis A. Dunlap, Jr., Nelson C. Malone, Wilbert C. Scott and Joseph W. Hutchinson at a special meeting of said Board on January 1, 1967, unanimously voted that they were in support of the Court's granting the relief sought by the plaintiff in his complaint and motion filed herein.

WHEREFORE: the corporate defendant, Mount Jezreel Baptist Church having fully answered the allegations of the complaint, prays on behalf of said defendant, that the relief requested by the plaintiff for declaratory relief and a preliminary injunction be granted.

MOUNT JEZREEL BAPTIST CHURCH
Defendant

/s/ Alton B. Johnson
Member of Board of Trustees
of Defendant Corporation

Patricia A. Trivers
Attorney for the Defendant
Mount Jezreel Baptist Church
2001 - 11th Street, N. W.
Washington, D. C. 20001

[Jurat]

* * *

[Filed Feb. 27, 1967]

Noted
M. F. McGuire
2/27/67

STIPULATION

This suit was instituted December 21, 1966, to set aside the proceedings of the congregational business meeting of December 9, 1966, on the ground of gross violation of the discipline and rules of order of the Mt. Jezreel Baptist Church. The question of which counsel of record represents the Church was raised by the pleadings filed on behalf of the Mt. Jezreel Baptist Church by two attorneys one of which denied the allegations of the invalidity of the meeting and the other admitting the alleged illegality of the proceedings. The Court strongly urged the parties to resolve the issues peaceably. Accordingly, the plaintiff on his behalf and the attorneys for the other parties negotiated a settlement of the dispute, the terms of which are hereby set forth, agreed to, and stipulated as follows:

1. The objection to the election of officers on December 9, 1966, is hereby withdrawn, the action will be dismissed with prejudice, the plaintiff to bear his costs, and thereafter the plaintiff will not himself, or through others, renew or raise, or cause to be renewed or raised, objection to any officer of the Mt. Jezreel Baptist Church now serving on the

ground of illegality of the proceedings of December 9, 1966.

2. The rules of order for every congregational business meeting shall be those in Hiscox, The New Directory for Baptist Churches (1951 ed.), and, in any case not covered by Hiscox, the defendants will follow Robert's Rules of Order for deliberative bodies.

3. During the remainder of 1967, regular congregational business meetings shall be scheduled and held in March, June, September, and December.

4. The institution of this suit shall not constitute grounds for disciplinary action against any member of the Mt. Jezreel Baptist Church.

5. A copy of this stipulation shall be furnished to each member in good financial standing of the Mt. Jezreel Baptist Church.

/s/ Charles E. Williams
Plaintiff pro se

/s/ Patricia A. Trivers, and
FRIEDLANDER & FRIEDLANDER
By: /s/ Blaine P. Friedlander
Counsel for Defendants

[Filed May 4, 1967]

ORDER

Upon consideration of plaintiff's Motion to reinstate the cause and the opposition thereto, and after argument of

counsel had thereon, and it appearing to the Court that the plaintiff has failed to make a proper showing and has failed to carry his burden of proof, and that the Motion to reinstate should be denied,

It is, therefore, this 4th day of May, 1967,

ORDERED that the Motion to reinstate be and it hereby is denied.

/s/ William B. Jones
Judge

[Filed May 15, 1967]

NOTICE OF APPEAL

Notice is hereby given that Charles E. Williams, plaintiff above named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the order denying the plaintiff's application for reinstatement of the action (for the purpose of construing and enforcing the terms of the stipulated dismissal) entered in this cause on May 4, 1967.

/s/ Charles E. Williams
Plaintiff

STATUTES AND RULES INVOLVED

The applicable sections of Title 29, Code of the District of Columbia (1961 ed.) provide:

> Sec. 501. It shall be lawful for the members of any society or congregation in the District, formed for the purpose of religious worship, to receive by gift, devise, or purchase a quantity of land not exceeding an acre, and to erect thereon such houses and buildings and to make such other use of the land and such other improvements thereon as may be deemed necessary for the purposes named, and for the comfort and convenience of the society or congregation.
>
> Sec. 502. Such society or congregation may assume a name, and any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation by the name so assumed, may be elected or appointed according to the rules or discipline governing the church or denomination to which said society or congregation may belong.
>
> Sec. 503. The persons elected or appointed as trustees or directors shall immediately make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and length of time for which they were elected or appointed, which shall be verified by the affidavit of one of the persons making the same, and shall be filed and recorded in the office of the recorder of deeds of the District.
>
> Sec. 504. The trustees or directors shall hold office during the period stated in their certificates, and vacancies in the office of trustee may be filled by election or appointment as above provided, and

rules and regulations may be adopted in relation to the management of the estate and the duties of trustees or directors, or for their removal from office, in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws in force in the District.

* * *

Sec. 507. Such trustees or directors and their successors shall have perpetual succession and existence, and shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law and equity whatsoever, in and by the name and style assumed as hereinbefore provided.

Edward T. Hiscox, The New Directory for Baptist Churches (1951 ed.), ch. VII, "Church Discipline," note 22, at page 191, provides:

> The pastor, by virtue of his office, is moderator of all church business meetings, but not of society business meetings, which meetings are held according to statute law, for the election of trustees and for other matters pertaining to temporalities. These meetings, even though composed of the same individuals, yet are not the same official bodies. The moderator is elected on nomination. The pastor is eligible to election the same as any other member of the society, but cannot assume the chair by right of his office.

FEDERAL RULES OF CIVIL PROCEDURE

RULE 23

CLASS ACTIONS

a. PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

b. CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

c. Determination by Order Whether Class Action To Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

d. Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

e. Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

RULE 53

MASTERS

* * *

b. REFERENCE. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it. [Amended, effective July 1, 1966.] * * *

RULE 60

RELIEF FROM JUDGMENT OR ORDER

* * *

b. MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U. S. C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. [Amended, effective March 19, 1948]

THE STIPULATED RULES PROVIDE	THE EVIDENCE ON FILE SHOWS*
a. The moderator must be impartial, may not be a partisan against the accused member, and should not preside where he is personally involved in the matters in dispute. (Hiscox, p. 191.)	Appellee Trammell presided at the excommunication proceeding even though he was an adversary of appellant Williams in litigation then pending (note 6, supra).[1]
b. A member may not be cited and tried for an offense at the same meeting without his consent. (Robert, # 75, p. 303.)	Appellant was cited and a vote to expel him taken at the meeting of March 12, 1967, called without prior notice to the membership, without appellant's consent, after appellant moved to dismiss the charges on the grounds of insufficiency pursuant to Hiscox's rules.
c. When a motion is timely made and seconded, the chair shall state the question, permit opportunity for debate on the merits and, at the close thereof, put the question to a vote and announce the result. (Hiscox, pp. 576-579; Robert ## 4, 5, 6, 9, 42, 46, pp. 178-184, 188-199.)	Appellant moved dismissal of the charges against him and the motion was properly seconded. But appellee Trammell failed and refused to entertain or put the question to a vote.
d. The accused member shall be given the names of the accusers and witnesses against him and be afforded the opportunity of hearing their testimony, of cross-examining them, and of introducing rebutting testimony. (Hiscox, p. 188; Robert, # 75, p. 303.)	Testimony on file in a related case now pending (note 5, supra) shows that no testimony was offered to prove the charges, no cross-examination of the accusers permitted and no opportunity was given to any one of more than 50 members who voted against expulsion to speak on behalf of appellant or to points of order.

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*(Affidavit of Charles E. Williams, filed March 15, 1967.)

1. Appellant Williams will be able to prove that appellee Trammell then communicated with the President of the United States and Senator Hugh Scott of Pennsylvania in order to subject appellant to discharge from Government employment or other disciplinary action.

THE STIPULATED RULES PROVIDE	THE EVIDENCE ON FILE SHOWS
e. When the evidence is in, the accused member shall retire from the assembly and the membership shall then deliberate upon the question of expulsion after which the vote shall be taken. (Robert, § 75, p. 303.)	No debate was permitted by appellee Trammell upon the question to expel. Those members rising to speak were ruled out of order. The entire proceeding extended one hour. (Trammell admission, note 5, supra.)
f. The vote to expel a member shall be by ballot, except by general consent. However, the rules of order are designed to protect the minority and thus must be adhered to strictly for that purpose. Consequently, business can be transacted by general consent only when there is no minority to protect. (Robert, §§ 48, 75, pp. 202-203, 303-304.)	Testimony (note 5, supra) shows that a standing vote of the members was taken in the presence of appellant. Appellee Trammell states (response to interrogatory, note 5, supra) that the vote was 82 for expulsion and 53 against.
g. A two-thirds vote of a quorum voting is required to expel a member from membership or from office after a trial. (Robert, §§ 48, 75, pp. 205-206, 303.)	The vote was 82 for expulsion of appellant and 53 against. The members not voting were not counted. Hiscox, p. 579, states that all members should vote unless for reasons excused or unless under discipline.
h. The good order and efficiency of the proceedings depend on the moderator of the meeting more than any one else. (Hiscox, p. 576.)	
i. Any action which conflicts with a rule of a higher order is null and void even if unanimous. (Robert, § 47, p. 201.)	(The question is whether the conditions set forth in the stipulated dismissal constitute a rule of a higher order.)

(i)

[Filed April 4, 1967]

POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S APPLICATION TO REINSTATE THE ACTION

Plaintiff moves under rule 60b of the Federal Rules of Civil Procedure to reinstate his cause of action alleging breach of faith and misrepresentation on the part of the defendants. There has been no misrepresentation nor has there been any breach of good faith.

The stipulation entered into by and between the parties states in its material paragraph "4": "The institution of this suit shall not constitute grounds for disciplinary action against any member of the Mt. Jezreel Baptist Church."

This portion of the stipulation was the subject of much discussion, and the plaintiff was advised that there was great sentiment within the church to remove him from that body. In fact, Mr. Williams acknowledged the movement to remove him from the church was in the offing as late as February 21, 1967. The parties agreed that the institution of the present cause of action would be the only ground that the church would not use.

The factual pattern will show the Court why Mr. Williams was not popular. Prior to April 22, 1966, Charles Williams was a Methodist. On that date Williams was baptized in the Baptist faith, and thereafter made application and was accepted as a member of the Mt. Jezreel Baptist Church on May 1, 1966. The church extended its right hand of fellowship to Williams in the hopes that Williams as a member would cease his attacks upon the pastor of the church.

Shortly after becoming a member in good standing, Williams increased the intensity of his attacks upon the pastor, took over the bookkeeping system, and attempted to organize and control the members of the church for his own purpose.

Since May 1, 1966, Williams has brought the instant action and one other action against the church or its members, has himself been sued for libel and slander, and when he advised the outgoing Treasurer and Trustees of the church that the outgoing Treasurer and Trustees should not turn over the books and records to the new Treasurer and Trustees, the church was forced to sue its members to recover its books and records. In short, Williams short history indicates that he is a most unwholesome influence on the Mt. Jezreel Baptist Church.

On July 29, 1966, in a deposition taken of Charles Williams in the case of *Trammel v. Williams*, C.A. 1578-66, Williams explained at page 10, et seq., of that deposition that he had always quarreled with the Baptists for the Baptists would not subscribe to an ecumenical principle, and stated that the reason that he decided to become re-baptized and a member of the Baptist church was:

> "I felt that I should become a member of the church.
>
> Q. Why did you think it was necessary to be a member of the church?
>
> A. Because I felt that matters had gotten to the point in the church where the church would be taken advantage of.
>
> Q. In other words, it wasn't a matter of religion so much as a matter of business?
>
> A. True."

It thus becomes apparent that Williams' interest in Mt. Jezreel Baptist Church was something less than religious.

As to the fact that Williams had no notice of the charges against him, one must refer to the case of *Williams v. Jackson* and *Trammell*, C.A. 717-67 filed in this court on the 24th day of March 1967, wherein, as part of his Complaint, Williams submitted for the court's inspection a seven page typewritten defense to his actions. It was read to the church body before the vote to separate him from the church.

Williams participated in his defense before the church and the church has found him wanting. It is obvious from the affidavits attached hereto and made a part hereof that it is not just one or two people who are desirous of being rid of Charles E. Williams and his problems. It is a goodly segment of the membership of the church.

There has been no breach of the stipulation entered into on the 27th day of February 1967 and the plaintiff's remedy, if any, lies elsewhere.

/s/ Blaine P. Friedlander

FRIEDLANDER & FRIEDLANDER
1210 Shoreham Building
Washington, D.C. 20005
Attorney for Defendant Trammell
and Mt. Jezreel Baptist Church

[JURAT]

* * *

[Filed April 11, 1967]

AFFIDAVIT OF REV. HAROLD E. TRAMMELL

District of Columbia: ss

Rev. Harold E. Trammell, being first duly sworn, on oath deposes and says that he has fully complied with the requirements of Hiscox in conducting the meeting of March 12, 1967.

That the atmosphere of passion alluded to by Charles Williams was created by Charles Williams himself. The statement read by the plaintiff at this meeting caused much of the reaction against Charles Williams.

[JURAT] /s/ Harold E. Trammell

AFFIDAVIT OF HENRY JACKSON

District of Columbia: ss

Henry Jackson, being first duly sworn, on oath deposes and says that he is the Chairman of the Board of Deacons of the Mount Jezreel Baptist Church, and that he was one of the nine deacons who signed the charges against Charles E. Williams.

On or before May 1, 1966 Charles Williams begged the Board of Deacons to consider him as a member of the church, and upon his protestations that his actions would be only for the best interest of the church, he was welcomed into membership.

Since that time he has caused disharmony and has disrupted its programs. He attempted to change the bookkeeping system and refused to allow anyone else to look at the books of the church.

In short, he so antagonized the members of the church that the Board of Deacons was forced to take the action that it did.

That Charles Williams knew that this action was forthcoming for the reason that our counsel, Blaine P. Friedlander, had apprised me of Mr. Williams requested stipulation that he not be disciplined, and after the meeting with the Board of Deacons, Mr. Friedlander was instructed to inform Mr. Williams that the prospect of charges being placed against him was imminent. This apparently was done, for Mr. Williams settled for the Stipulation as agreed, and it was agreeable to the church that the filing of the suit would not be grounds for dismissal.

/s/ Henry Jackson

[JURAT]

* * *

AFFIDAVIT OF BLAINE P. FRIEDLANDER

District of Columbia: ss

Comes now Blaine P. Friedlander, being first duly sworn, who on oath deposes and says that he was retained as counsel for the Mount Jezreel Baptist Church and Rev. Harold E. Trammell in the above-entitled cause.

That as a result of a certain Motion brought by counsel for the 1966 Board of Trustees, the plaintiff was advised by the court that if he did not settle the matter would be referred to a special master.

That during the course of negotiations for settlement, plaintiff asked this counsel for an assurance that he would not be removed from the church for his past activities. Your affiant transmitted this proposition to his clients and was advised that feeling against the plaintiff was running so high that they could give no such assurances, and would not give such assurances.

On the 20th day of February at a second settlement conference, plaintiff acknowledged that efforts probably would be made to remove him from the church, and he asked only that the church guarantee that the institution of the instant action would not be used as a grounds of removal. This the church agreed to do, and the agreement was incorporated in the stipulation signed on the 27th of February 1967.

Plaintiff was fully aware at all times as to the feeling of the church with respect to his membership.

/s/ Blaine P. Friedlander

[JURAT]

* * *

BRIEF FOR APPELLEES

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,076

CHARLES E. WILLIAMS, on behalf of himself and all other persons similarly situated and on behalf of the Mt. Jezreel Baptist Church,

Appellants,

v.

Rev. HAROLD E. TRAMMELL, Pastor of the Mt. Jezreel Baptist Church, and the MT. JEZREEL BAPTIST CHURCH, a District of Columbia Corporation,

Appellees.

APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIEDLANDER & FRIEDLANDER
1210 Shoreham Building
806 - 15th Street, N.W.
Washington, D. C. 20005
Counsel for Appellees

Washington, D. C. · THIEL PRESS · 202 · 393-0625

STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellees, the questions are:

1. Was the denial of the appellants' motion to set aside stipulation of dismissal and reinstate cause an error where the appellants produced no evidence and cited no authorities in support of their position?

2. Should the Court have considered the compliance or noncompliance with Rule 23 of the Federal Rules of Civil Procedure in determining whether or not to grant the motion for reinstatement, particularly when appellants were silent below and have cited no authority nor pointed out any evidence to sustain their position?

3. Should the Court have considered the *unproven statement* by appellant that appellees' attorney was guilty of having a conflict of interest in said attorney's representation of appellees in ruling on the motion to reinstate?

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CITATIONS

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BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

Charles Williams filed this action on December 21, 1966, seeking to set aside the election of officers of the Mount Jezreel Baptist Church, to require the Church to pass by-laws and elect officers

thereunder, and to enjoin the Church from installing officers elected December 9, 1966. (J.A. 1, 8, 9)

On the 3d of January 1967, Appellees filed an answer, an opposition to motion for preliminary injunction, and a certificate of readiness. (J.A. 1). Two days later the outgoing church trustees filed an answer and consented to the relief Williams sought. (J.A. 2).

On January 16, 1967, the outgoing trustees also filed a motion to strike answer of appellees. (J.A. 2).

The next day, January 17, 1967, there was entered an order consolidating the hearing of the preliminary injunction with trial on the merits. (J.A. 2).

In this posture and to prepare the matter for immediate pretrial, the motion of the 1966 trustees to strike the answer of the appellees was calendared for hearing before the Motions Court. After hearing representations of appellant and the outgoing trustees, the Motions Court suggested the parties might discuss settlement.

After several weeks of negotiation wherein the main issues were the election of December 9, 1966 and the excision of Charles Williams, the parties reached an accord. Charles Williams then prepared the stipulation of settlement and tendered it to the defendants. It was signed by Charles Williams, pro se, and Patricia A. Trivers and Blaine P. Friedlander as counsel for defendants. (J.A. 16-17).

It should be noted that as of this time no mention of a class action had been suggested by any party, and the matter had proceeded through four court appearances without the matter being specifically mentioned by the appellant.

During the negotiation of settlement appellant asked that as a result of his actions he be not removed from the Church. Counsel checked with his client, and returned to Williams with the intelligence that Mt. Jezreel would not agree to keep Williams in the Church,

On the 20th day of February, Williams asked that the filing of the instant action not be a grounds for the excision of any member, and the Church agreed. (J.A. 26 iv, v). This agreement was incorporated in the stipulation of settlement. (J.A. 17).

On March 12, 1967, on grounds other than that excluded by the Board of Deacons of Mt. Jezreel Baptist Church, the Church voted to withdraw the right hand of fellowship from Charles E. Williams. Three days later, Williams filed his motion to reinstate the action (J.A. 2), which motion was opposed by appellee. The 1966 Trustees took no part in this action.

When the matter came on for hearing, Williams tendered no proof to the Court nor advanced any facts to support his contention, and the Court, after giving Mr. Williams every opportunity, signed the order of May 4, 1967, denying the motion in that appellant failed to make a proper showing.

The appellant filed a notice of appeal on May 15, 1967 from the order of denial of his application for reinstatement.

SUMMARY OF ARGUMENT

1. Where the appellant admits there was no abuse of discretion and advances no argument and offers no proof that the Church had no right to excise him, he cannot prevail.

2. The appellant attempts to raise the question that the Trial Court cannot waive Rule 23 of the Federal Rules of Civil Procedure. However, he failed to point out specifically the evidence upon which he relied, failed to cite any authority for his contention, and failed to argue his point.

3. Appellants' attack upon counsel has for its purpose the setting aside of the stipulation of settlement. Appellant cannot now

complain of counsel's authority to act after appellant dealt with counsel for appellees.

4. This Court cannot decide matters which are not before it.

ARGUMENT

I.

Appellant does not sustain his burden when he offers no evidence to support his application for reinstatement.

When the last argument of counsel is made, there will be but one issue in this cause, and that issue will be whether appellant made out a case to support his motion to reinstate.

Appellant admits "The District Court correctly decided that fact of [Williams'] excommunication would be conclusive." (Appellant's Brief 15). Appellant then maintains the manner in which he was excised was improper and the Motions Court should so hold. (Appellant's Brief 15).

In his brief appellant cites authorities which might support his contention of an illegal ouster, but he can not and does not cite any portion of the record containing any such facts. Appellant produced no evidence although the opportunity to do so was given him.[1]

Secondly appellant claims that his charges that there were improper methods used to oust him from the Church obligated the Trial Court to inquire, and he seems to intimate that the Trial Court failed to do so. The forum was available. Appellant could have pre-

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[1] Appellant relies on the Complaint he filed in Williams vs. Trammell and others, C.A. 717-67, for his facts. Not only are the allegations not proven, but they are not a part of this record and thus can not be considered. *TVT Corp. v. Basiliko*, 103 U.S. App. D.C. 181, 183, 257 F.2d 185.

sented his proof, but did not. The Trial Court rightly ruled against appellant. (J.A. 17-18). Appellant admits the Trial Court below did not abuse its discretion.[2]

II.

Disputed claim of Williams that this was class action was abandoned below and on appeal.

This court has held for many years that where a party fails to provide a sufficient record with the evidence relied upon clearly identified, the proposition cannot be considered, and where the error relied upon is not argued in the brief, it is deemed abandoned. *Abrams v. American Security and Trust*, 72 App. D.C. 79, 80, 111 F.2d 520, 129 A.L.R. 360 (1940); *Wardman Justice Motors v. Petrie*, 59 App. D.C. 262, 39 F.2d 512, 69 A.L.R. 648 (1930); *Jackson v. Fuller*, 66 App. D.C. 239, 85 F.2d 816; *Schwartzman v. Lloyd*, 65 App. D.C. 216, 82 F.2d 822 (1936).

If not abandoned in law, appellant abandoned the point in fact. In his Complaint appellant alleged a class action in paragraphs five and six. (J.A. 3). Appellees in their answer denied the allegations. (J.A. 10). The outgoing trustees while rushing to help Appellant, would not admit to the class action and demanded strict proof. (J.A. 12). The subject was not again to be discussed or argued below. When Charles Williams drafted the stipulation of settlement, he listed himself "Charles E. Williams, Plaintiff pro se". (J.A. 17).

In any event, the point is immaterial, for the appeal is only from an order denying appellant's motion to reinstate (for the purpose of construing and enforcing the terms of the stipulated dismissal.) (J.A. 18). The Stipulation abandoned Rule 23 and the class action.

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[2] "It is not contended, however, that the denial of the application constituted an abuse of discretion." (Appellant's Brief 7).

III.

Appellant cannot strike stipulation of settlement by attacking authority of counsel after dealing with counsel.

The object of appellant's attack upon counsel in his brief at pages 10 through 14 becomes clear when he states that counsel's participation "during settlement negotiations so taints the stipulation of dismissal that it cannot operate as a valid subsisting judgment of the District Court." (Appellant's Brief 14).

This position does not find favor in the law, which states that after a final judgment only the party who was not properly represented can take advantage of an unauthorized appearance. *Walker v. Sutherland,* 299 P. 335, 136 Or. 355, cert. denied 52 S. Ct. 30, 284 U.S. 649, 70 L. Ed. 551. Appellant's claim is that by representing the church and Rev. Trammell, counsel for appellees had such a conflict of interest that the settlement agreed to by all parties should be set aside.

At the trial below all factions were represented, and all counsel signed the stipulation. It is obvious that Williams' position is unsound. This claim of Williams' is also immaterial, as the pivotal issue of the case is whether Williams' motion to reinstate should have been granted.

IV.

This court cannot decide matters not before it.

For a last point appellant suggests that this case presents important questions for decision. (Appellant's brief 19-22). The questions may be important, but appellant merely cites the propositions he would like decided. Let it be clearly understood that at no time below were these questions presented, nor has the appellant introduced

evidence of any facts which would require a decision. In short, there is nothing for the Court to decide in this portion of the brief.

CONCLUSION

The appeal fails to state any grounds upon which appellant would be entitled to relief and appellees respectfully submit the order appealed from should be affirmed with costs.

Respectfully submitted,

FRIEDLANDER & FRIEDLANDER

By: Blaine P. Friedlander

REPLY BRIEF FOR APPELLANTS

United States Court of Appeals

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APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CHARLES E. WILLIAMS
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United States Court of Appeals

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REPLY BRIEF FOR APPELLANTS

I.

This Is a True Class Action

This action (brought as an individual action, as a representative suit on behalf of minority members of the congregation, and as a derivative suit to enforce the right of the corporate estate to have its trustees fairly

chosen in accordance with law and custom and its assets secured against mismanagement and waste) is a true class action under Rule 23 of the Federal Rules. Knowles v. War Damage Corp., 83 U.S. App. D.C. 388, 171 F.2d 15 (1948), cert. denied, 336 U.S. 914, 69 S.Ct. 604, 93 L.Ed. 1077 (1949); Brotherhood of Locomotive Firemen & Enginemen v. Graham, 84 U.S. App. D.C. 67, 175 F.2d 802, reversed on other grounds, 338 U.S. 232, 70 S.Ct. 14, 94 L.Ed. 22 (1949); Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 86 S.Ct. 845, 15 L.Ed. 2d 807 (1966).

The courts are bound, "at this stage of the proceedings, by the allegations of the complaint. * * * It is only after proof has been received" on the issue of whether the action may be maintained as a class suit, "or admissions made in open court," that the courts may deny the appellant-plaintiffs' right to maintain the action as a class suit. Railway Express Agency v. Jones, 106 F.2d 341, 343 (7th Cir. 1939).

Here, no proofs have been taken and no determination made of the issue. Consequently, this Court permitted the record to be modified so that the appeal could be prosecuted as a class suit.

II.

The Record Is Adequate to Enable Appellate Review of the Alleged Errors of Law Committed Below

The pertinent portions of the record on appeal——the pleadings and motions, supporting affidavits, counter-affidavits, and the stipulated judgment of dismissal (including the published rules incorporated therein by reference of which the Court may take judicial notice) ——are sufficient to enable the Court to pass upon the alleged procedural errors committed below.

The appellants contend that if the record does not sustain the application for Rule 60(b) relief, the District Court was obliged to afford appellants the same meaningful evidentiary hearing upon the verified allegations of deliberate violation of the crucial conditions of the stipulated dismissal as would have been afforded in an independent action to have the judgment set aside. Compare the procedure for relief against a default judgment provided in Rule 9(g) of the Local Civil Rules.

The appellants do no propose to have this Court travel outside the record for evidence essential to determination

of this appeal, as appellees suggest.[1] The purpose of the references (in the Brief for Appellants, pp. 12, 13, JA 24-25) to testimony and admissions on file in pending related cases is to indicate the existence of competent, relevant evidence of which the District Court could take judicial notice.

III.

Appellees Misapprehend and, Thus, Wholly Fail to Meet the Substance of Appellants' Argument Against the Unauthorized Dual Representation of Counsel

The general rule is that where in personam jurisdiction is acquired over a defendant solely by the appearance of an attorney, the judgment is a nullity if the appearance of such counsel is unauthorized.[2]

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1. Courts of Appeals, however, frequently do take judicial notice of collateral proceedings where justice may require it. E.g., Lowe v. McDonald, 221 F.2d 228, 230-231 (9th Cir. 1955); Fletcher v. Evening Star Newspaper Co., 77 U.S. App. D.C. 99, 133 F.2d 395 (1942); Beard v. Bennett, 72 U.S. App. D.C. 269, 114 F.2d 578 (1940). See Williams v. Hot Shoppes, Inc., 110 U.S. App. D.C. 358, 371-374, 293 F.2d 835, 848-851 (1961), where the Appendix was sought and obtained as an aid to determination.

2. Shelton v. Tiffin, 6 How. (47 U.S.) 163, 186, 12 L.Ed. 387 (1848); Hatfield v. King, 184 U.S. 162, 22 S.Ct. 477, 46 L.Ed. 481 (1902). See Southern Pine Lumber Co. v. Ward, 208 U.S. 126, 28 S.Ct. 239, 52 L.Ed. 420 (1908), affirming, 16 Okl. 131, 85 Pac. 459, which voided a judgment recovered by a plaintiff whose attorney had no authority to institute the action.

Appellees rely on the exception of Walker,[3] viz., that one not represented by the unauthorized attorney may not question the unauthorized appearance after final judgment. But the exception is entirely inapplicable to this case because, first, the appellants, as members of the congregation, will share in bearing the cost of representation by appellees' attorneys while, in Walker, there was no allegation that the unauthorized attorney expected to collect any fee from the complainant. And, secondly, the dual representation of appellees' counsel was seasonably challenged before judgment while in Walker the challenge was not made until after judgment and the failure to file a timely objection constituted an implied ratification of counsel's appearance.

Here, the question on appeal is not merely the authority of appellees' counsel to appear for the Church but whether a potential conflict of interests disqualifies counsel from representing both the appellee-officer (a debtor of the Church charged with misconduct) and the institutional interests without the express consent of the congregation or a majority of the trustees of the corporate estate;[4]

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3. Walker v. Sutherland, 136 Ore. 358, 299 Pac. 335, cert. denied, 284 U.S. 649, 52 S.Ct. 30, 76 L.Ed. 551 (1931).

4. Cf., Petition of Trinidad Corp., 229 F.2d 423, 430 (2d Cir. 1955).

and whether the District Court erred in refusing to hear and decide the issue as a preliminary matter.

A challenge of counsel's authority is "a preliminary matter to be disposed of before proceeding to the merits of the case." And "the District Court may in its discretion, at any stage of the case, require an attorney to show his authority to appear." Pueblo of Santa Rosa v. Fall, 56 App. D.C. 259, 261-262, 12 F.2d 332, 334-335 (1926), reversed on other grounds, 273 U.S. 315, 47 S.Ct. 361, 71 L.Ed. 658 (1927); McLean v. Burkinshaw, 71 App. D.C. 107, 107 F.2d 665 (1939), and authorities cited.

CONCLUSION

The order denying the application for Rule 60(b) relief should be vacated and the cause remanded for further proceedings.

Respectfully submitted,

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